



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of John Davis,  
City of Wildwood

CSC Docket No. 2021-557

Interim Relief

**ISSUED: FEBRUARY 5, 2021 (JET)**

John Davis, a Code Enforcement Officer with the City of Wildwood, represented by Louis M. Barbone, Esq., petitions the Civil Service Commission (Commission) for relief of his immediate suspension and removal effective October 13, 2020.

As background, the petitioner was appointed as a Code Enforcement Officer in 2016.<sup>1</sup> On January 9, 2014, petitioner signed an employee agreement with the appointing authority, and he agreed that while he was a licensed real estate agent and performing public work for the appointing authority, he would not engage in activity that would result in the appearance of a conflict of interest. The appointing authority issued a May 22, 2020 Preliminary Notice of Disciplinary Action (PNDA) against the petitioner on charges seeking a 30 working day suspension, alleging that the petitioner was at his secondary employer<sup>2</sup> while on duty. The appointing authority issued a June 10, 2020 PNDA on charges against the petitioner seeking a six working day suspension, alleging that petitioner used obscene language on May 28, 2020 at the City Administration Building. The appointing authority issued an October 13, 2020 PNDA on charges and imposed an immediate suspension pending removal effective October 13, 2020, alleging that the petitioner’s real estate work was causing the appearance of a conflict of interest. Specifically, the appointing authority alleged that, in the course of his public employment, the petitioner issued a letter

<sup>1</sup> The petitioner retired as the appointing authority’s Chief of Police effective May 1, 2008. The appointing authority appointed him as a Property Inspector, effective January 9, 2014.

<sup>2</sup> The petitioner works as a real estate agent as a second job with Weichert Realty.

regarding the demolition of a property, the lender took possession and listed the property for sale, and the property was sold to another public employee who directly reported to the petitioner. The appointing authority alleged that petitioner was listed as selling agent for the property and continues to be involved in real estate transactions. As such, in order to avoid the appearance of a conflict of interest, the appointing authority implemented an immediate suspension without pay.<sup>3</sup> On October 16, 2020, a pre-termination hearing was conducted and the petitioner was suspended without pay effective October 21, 2020.<sup>4</sup> See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). A departmental hearing has not yet been conducted.

In his request, the petitioner asserts that his removal appears to stem from a September 2019 statement that he provided to the State Police with respect to an investigation that was being conducted on the appointing authority's Commissioners at the time. In this regard, he contends that within 30 days of making the statement, he appeared at the Commissioner's office and was asked to leave due to a \$180 bill for a campaign sign that appeared on a property. The petitioner adds that on February 25, 2020, he met with the appointing authority and attempted to settle the CEPA matter, however, the appointing authority removed his duties and informed him that the Commissioner could not be subjected to disciplinary action. The petitioner adds that the appointing authority subsequently issued the three PNDAs against him as a result of the CEPA complaint. Moreover, the petitioner explains that at the time he was notified of the immediate suspension, he provided statements to the appointing authority which confirmed that he was not involved in the charges against him.<sup>5</sup>

Additionally, the petitioner argues that his immediate suspension without pay is inappropriate, as there is no evidence that establishes any of the charges against him. In this regard, the petitioner contends that the evidence provided against him by the appointing authority, including documentation from the Multiple Listing Service (MLS) real estate program, is unreliable. The petitioner states that the appointing authority only provided the employment agreement and MLS in support of the charges. The petitioner maintains that he complied with the employee agreement and he provided evidence to show that he had divested himself of any

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<sup>3</sup> It is noted that the petitioner filed a Conscientious Employee Protection Act (CEPA) claim in Superior Court on October 7, 2020.

<sup>4</sup> It is noted that the parties attempted to settle the matter but they did not reach an agreement.

<sup>5</sup> The petitioner contends that the statements indicated that he had no interest in conducting real estate transactions, provided information with respect to the broker and the seller representatives from the real estate agency where he is employed in order to confirm that he was not involved in the real estate transaction, and information from Timothy Blute, who directly reported to the petitioner, indicating that the petitioner had nothing to do with the sale of the property. The petitioner explains that, as of 2016, Blute was aware that the appointing authority assigned the petitioner to find a financial source to demolish the property and to send a demolition letter to the property lender-owner.

interest in real estate transactions.<sup>6</sup> The petitioner adds that it was his responsibility as a part of his public duties to issue the demolition letter, and the appointing authority has not proved otherwise. Further, petitioner asserts that the appointing authority has been aware since the time of his 2014 appointment that he is a real estate agent, and, as such, his secondary employment at the real estate agency cannot be perceived as a conflict with his public duties. The petitioner argues that he has a clear likelihood of success on the merits in this matter, as he has nothing to do with the sale of real estate through the real estate agency where he is employed. The petitioner adds that the charges against him may result in irreparable harm to his reputation. The petitioner assert that the public will not benefit as a result of his suspension, as he will be unable to assist the property owners who require his review. As such, the petitioner contends that the public interest warrants interim relief in this matter. Moreover, the petitioner argues that the appointing authority cannot issue the PNDAs against him without conducting a departmental hearing in support of its claims.

In response, the appointing authority, represented by Colleen S. Heckman, Esq., maintains that the petitioner has not established a likelihood of success in this matter. The appointing authority asserts that a conflict of interest exists due to petitioner's alleged connection with the sale of real estate and commissions in the jurisdiction. The appointing authority adds that the petitioner has not provided any evidence to dispute the appearance of a conflict. The appointing authority explains that, pursuant to an employee agreement, the petitioner is required to avoid the appearance of conflicts with respect to his work as a Code Enforcement Officer, which includes his secondary employment as a real estate agent.<sup>7</sup> The appointing authority contends that the MLS listings indicate that the petitioner is the primary listing agent for such properties, and the listing of his name as selling agent creates the appearance of a conflict.<sup>8</sup> The appointing authority maintains that the petitioner actively engaged in real estate sales prior to the issuance of the PNDAs, and he continues to conduct such work. The appointing authority explains that the appellant has failed to show that he is in danger of irreparable harm or how his reputation was adversely affected. The appointing authority adds that petitioner's suspension does not pose a danger to the public, as there is more than one employee who can perform the duties of a Code Enforcement Officer. The appointing authority maintains that it is against the public interest to allow an employee who is charged with an alleged conflict of interest to continue working, as to do so would allow such employees to engage in conduct that conflicts with their public job duties. As such, the immediate suspension was appropriate. The appointing authority asserts that it was

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<sup>6</sup> The petitioner states that only the Realtor involved has any interest in the transactions for which he is allegedly involved.

<sup>7</sup> The appointing authority states that, at the time petitioner was appointed as a Property Inspector in 2014, it was aware that he was a licensed Realtor, and as such, it required him to sign the employment agreement to avoid the appearance of a conflict.

<sup>8</sup> The appointing authority notes that the MLS listings show that the petitioner was listed as a primary agent as recently as September 2020.

determined at the pre-termination hearing that the petitioner's violation of the employment agreement constituted a danger to the appointing authority's ability to provide public services, and as such, the immediate suspension was appropriate. Moreover, the appointing authority contends that the petitioner's CEPA claims are not relevant to this matter.

In support, the appointing authority provides affidavits, e-mails, and reports which it contends establish that the petitioner was selling real estate and receiving commissions while serving as a Code Enforcement Officer.

### CONCLUSION

*N.J.A.C.* 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

In reviewing this matter, it is not necessary to address the merits of the charges against the petitioner. The issue to be determined is whether the nature and seriousness of the charges support the necessity for an immediate suspension. A critical issue in any disciplinary appeal is whether or not the petitioner's actions constituted imposing discipline. The Commission will not attempt to determine such a disciplinary appeal on the written record without a full plenary hearing before an ALJ who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Likewise, the Commission cannot make a determination on whether the petitioner's subsequent penalty was inappropriate without the benefit of a full hearing record before it. Since the petitioner has not conclusively demonstrated that he will succeed in having the underlying charges dismissed in this petition, he has not shown a clear likelihood of success on the merits.

*N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1 provide that an employee may be suspended immediately without a hearing if the appointing authority determines that the employee is unfit for duty or is a hazard to any person if allowed to remain on the job or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services. Additionally, where the suspension is immediate, the PNDA must be served within five days following the immediate suspension. In the present case, the charges in the PNDA are undoubtedly serious. If the petitioner was engaging in the alleged conduct, his continued employment would have negatively impacted the order and effective direction of public services and would have compromised the integrity of the appointing authority's code

enforcement services. Moreover, the harm the petitioner is suffering is monetary in nature which can be remedied by an award of back pay should he be ultimately successful at his departmental hearing or any subsequent appeal. Further, the public interest would not have been served by allowing the petitioner to be placed back on the job pending his departmental hearing. The Commission notes that the petitioner may raise his concerns of retaliation at the departmental hearing or at a subsequent Office of Administrative Law hearing as a defense to the charges against him. However, those arguments do not negate the seriousness of the charges against him in the instant matter. Moreover, the Commission does not have jurisdiction in this matter to address the petitioner's CEPA claims. Accordingly, the Commission finds that the appointing authority possessed a valid basis for suspending the petitioner prior to the departmental hearing.

With regard to the procedural requirements for an immediate suspension, *N.J.A.C. 4A:2-2.5(b)* provides, in pertinent part, that when an employee is suspended immediately and without pay, the employee must be apprised orally or in writing of why the suspension is sought, the charges and general evidence in support of the charges, and provided sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority. In a prior case addressing this issue, *In the Matter of Anthony Recine* (MSB, decided March 10, 1998), it was found that the Township of Hamilton did not provide a proper pretermination hearing since *Recine* was not made aware of the charges and the general evidence supporting the charges prior to being suspended. By contrast, as set forth below, the petitioner in the instant matter was well aware of the charges against him and the evidence in support of the charges at the time of his suspension.

The record reflects that the petitioner was apprised in writing that he was immediately suspended on October 13, 2020 and was provided the basis for his suspension. The petitioner also admits in this matter that he immediately provided statements to the appointing authority that he was not involved with the alleged behavior against him. The petitioner was served with the October 13, 2020 PNDA, charging him with conducting unbecoming a public employee and other sufficient cause. The specification as indicated in the PNDA is the general evidence supporting the charges. The petitioner was provided with sufficient opportunity to respond. Moreover, the PNDA was served within five days after the petitioner was suspended and no procedural violations occurred.

*N.J.A.C. 4A:2-2.5(d)* provides that a departmental hearing, if requested, shall be held within 30 days of the PNDA unless waived by the employee or a later date as agreed to by the parties. By letters dated May 29, 2020, July 20, 2020 and October 16, 2020, the petitioner requested a hearing. The record reflects that the parties attempted to settle the matter prior to when the hearing could be scheduled. While there is no evidence that the petitioner adjourned or attempted to reschedule any

hearing dates, given the attempts to settle the matter, it is clear that the petitioner, at least implicitly, agreed to postpone the departmental hearing. However, no further delay is warranted. Accordingly, if it has not already done so, the appointing authority must immediately schedule a departmental hearing.

**ORDER**

The Civil Service Commission orders that the petitioner's request for interim relief be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3<sup>RD</sup> DAY OF FEBRUARY 2021

*Deirdre' L. Webster Cobb*

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